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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1593

CHEVRON INTERNATIONAL OIL COMPANY, INC.,

Petitioner,

—v.—

FAIRMONT SHIPPING CORP. and
FAIRWINDS OCEAN CARRIERS CORP.,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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The petition adequately sets forth the citations of the Court of Appeals and District Court opinions, and the jurisdictional requisites.

Questions Presented

The petition incorrectly describes the pertinent contract as one "to arrange and pay for tug assistance". The District Court found "that the contract required Chevron to provide the Western Eagle with pilotage and tug assistance at Flushing" (p. 27a*).

* Unless otherwise specified, all page references herein are to the petition and appendix thereto.

Statement

The relevant facts set forth in the Court of Appeals' opinion (pp. 2a-4a) are that the Western Eagle stranded on the rocky bank of the Scheldt River when the tugs furnished by petitioner under its contract with respondents abandoned the vessel while she was helpless against the wind and tide (p. 31a). The District Court held that the failure of the tugs to give the assistance contracted for was a breach of petitioner's warranty of workmanlike service (p. 35a). Petitioner's statement that "The tugs' performance was not found negligent" and "the Court would have had difficulty in affirming a finding of negligence" are inaccurate (p. 3). The District Court properly concluded that the tugs "failed to fulfill their warranty of workmanlike service" (p. 34a) and emphasized that this is a case in contract and that non-negligent as well as negligent conduct may breach the warranty of workmanlike service (p. 29a). The Court of Appeals said:

> "If this were a case turning on a negligence standard, we might find it more difficult.[15]
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> • • •
>
> [15] Possibly a finding of negligence based on the abandonment of WESTERN EAGLE by the tugs under the circumstances would have been sustainable, but this is not before us."

Judge Mansfield's dissenting opinion is a disagreement with the facts found by the District Court and the majority opinion accepting those findings.

ARGUMENT

Petitioner's reasons for granting a writ are unsound and unsupported by the cases cited. The Court of Appeals said after discussing the Ryan type cases:

> "With this background in mind, it can be seen that the instant case is not really a Ryan case at all. * * * This case involves only the much simpler issue of whether Chevron's contract to provide tug assistance imposed on Chevron an obligation to perform in a workmanlike manner. * * * This obligation has been implied in contracts ranging from an ordinary construction contract, (citations omitted), to a contract to install plumbing, (citations omitted), to a contract to tan goat skins, (citations omitted) and there is no reason why it should not be implied in maritime service contracts as well. Accordingly, we hold that there should be implied in Chevron's contract to provide tug assistance an obligation to perform in a workmanlike manner—that is, a warranty of workmanlike performance." (pp. 12a-14a).

In *Singer* v. *Dorr,* E.D., La. 1967, 272 F. Supp. 931, the Court specifically found that warranty of workmanlike service existed in a towing contract as it later did in *T.J. Stevenson & Co. Inc.* v. *George W. Whiteman Towing, Inc.,* E.D., La. 1970, 1971 AMC 345 (not otherwise reported). Neither decision was challenged in the Court of Appeals for the Fifth Circuit.

The rule as reiterated by Judge Smith in this case is not in conflict with *Stevens* v. *The White City,* 285 U.S. 195 (1931) as suggested by petitioner. That case turned

on the question as to whether a tug was liable for the damage to its tow as a bailee in the absence of proof of when, where or how the damage was sustained. The District Court held that the tug was a bailee and that there was a presumption of negligence. The Circuit Court of Appeals reversed holding that the damage to the vessel towed created no presumption of negligence. This Court said:

> "a tug's receipt of a tow in good order and delivery in damaged condition raises no presumption of negligence."
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> • • •
>
> A contract merely for towage does not require or contemplate such a delivery as is ordinarily deemed essential to bailment." (p. 200)

The claim in *Stevens* v. *The White City,* was one in negligence and the petitioner failed to carry the burden of proof, relying on the contract of towage as one of bailment. This Court had no occasion to consider whether there had been a breach of the warranty of workmanlike service under the contract.

Petitioner's argument that it had no contractual liability for workmanlike performance would make the contract meaningless and lead to the situation where a tug could elect not to provide assistance with impunity.

Holding the petitioner to a warranty of workmanlike service is neither in conflict with nor an extension of existing law, but a clear cut requirement that a contractor of maritime services perform in a workmanlike manner.

CONCLUSION

The petition for a Writ of Certiorari to the Court of Appeals for the Second Circuit should be denied.

Respectfully submitted,

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August 5, 1975